

The Administrative Law Judge granted claimant's request for medical treatment and temporary total disability weekly benefits. Respondent argues that claimant failed to present credible evidence to prove that he suffered a work-related accidental injury while employed by the respondent. The thrust of respondent's argument is that claimant's description of how the alleged accident occurred and the injuries claimant received in such accident are so inconsistent that the claimant is not believable.

Respondent points out that claimant completed an Employer's Report of Accident which stated that the claimant was injured when he and the fork lift went out the back of the truck trailer. Also contained in such report was claimant's description of his injuries which did not include his left shoulder. Respondent contends that information contained in that report is inconsistent with claimant's testimony which stated that claimant had jumped off of the fork lift and the fork lift remained in the trailer of the truck until it later rolled out of the trailer. Respondent also questions whether claimant injured his left shoulder during such accident as he did not report the left shoulder injury until August 14 when he amended the Employer's Report of Accident. The Appeals Board has examined the Employer's Report of Accident completed by the claimant on July 21, 1995 and finds that an additional description of the accident was contained in the report that stated claimant jumped clear of the forklift, landing on the asphalt. The Employer's Report of Accident also contained the following description of claimant's injuries: "damage to body unknown as I write this." Respondent further contends that claimant attempted to persuade two fellow employees to lie about what they knew about the accident. The Appeals Board finds from a review of the testimony of these employees and claimant's testimony that the conversation claimant had with these two employees in reference to the accident cannot be construed as an attempt by the claimant to persuade the employees to lie about the facts surrounding the accident.

Claimant received medical treatment for his back, hip and shoulder injuries subsequent to his alleged work-related accident, first from The Business & Industry Health Group of Kansas City, Missouri. The respondent authorized the Health Group to treat the claimant on August 11, 1995 and August 18, 1995. Thereafter, the respondent refused to provide the physical therapy recommended by the Health Group. Because of his continuing symptomatology, claimant then consulted his family physician, Carl M. Myers, M.D., for further treatment. Dr. Myers referred claimant to Steve T. Joyce, M.D., an orthopedic surgeon, who performed surgery on claimant's left shoulder on November 8, 1995. Claimant complained of low back pain and left shoulder pain when he was sent by the respondent to The Business & Industry Health Group for treatment. Claimant gave Dr. Myers a history of injury to his left shoulder and right hip when he jumped off of a fork lift on July 21, 1995. Dr. Myers related claimant's left shoulder to his work-related accident of July 21, 1995. In a letter dated December 11, 1995, Dr. Joyce opined that the July 21, 1995 accident injured claimant's shoulder and necessitated surgery on November 8, 1995.

In granting the requested compensation benefits, the Administrative Law Judge had to find claimant a credible witness and accept his version of the accident. The Administrative Law Judge had the opportunity to observe the claimant testifying and assess his demeanor. In this instance, the Appeals Board gives some deference to the Administrative Law Judge's opinion as to claimant's credibility. Additionally, claimant's medical records show claimant was consistent with complaints of injuries to both his back and left shoulder. Therefore, the Appeals Board finds, for preliminary hearing purposes, that it is more probably true than not true that claimant sustained personal injury by accident arising out of and in the course of his employment with the respondent on July 21, 1995.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Steven J. Howard dated February 7, 1996, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Thomas Stein, Kansas City, MO  
Stephanie Warmund, Overland Park, KS  
Steven J. Howard, Administrative Law Judge  
Philip S. Harness, Director